THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.854 of 2006

DATED: 17-04-2006

Between:

A.Sivaiah and another . . .Petitioners

And

State of A.P. and others . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.854 of 2006

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O R D E R:

On Government of Andhra Pradesh sanctioning special land acquisition units for acquisition of land for excavation of canal under Pushkar Lift Irrigation System (PLIS) in various Mandals of East Godavari District, through G.O.Ms.No.136, Irrigation and Command Area Development Department, dated 24-02-2004, for supplying water for agricultural purpose in upland areas, the petitioners filed the present writ petition contending that the total extent of property covered by Survey No.537 of Murari Village, Gandepalli Mandal, East Godavari District, is classified as Grama Kantham and is covered by houses. Since the nature of the land is being Grama Kantham, the Government at no point of time has changed the classification of the land by following procedure till date to make it a Government poramboke. The persons, who are in possession of the property through their predecessors in title, are enjoying the property continuously treating it as their land and it is allowed to be sold for the last 120 years. Since the people have constructed dwelling houses, business places, hotels etc., they cannot be dispossessed from the said land without following due procedure for acquiring the property under the Land Acquisition Act.

It is stated that the first petitioner constructed a hotel and 25 rooms lodge by obtaining a loan of Rs.10.00 lakhs from the bank and that he gifted a part of the land to the second petitioner. The third respondent directed the fifth respondent to dig a

canal through their land without issuing any notification under the Land Acquisition Act. The same is in violation of Article 300-A of the Constitution of India.

It is further stated that when a part of the land was acquired for widening of the road and construction of NH-5, proceedings were initiated for payment of compensation treating it as a private land covered by various houses. Merely treating it as a Government land that too Grama Kantham, they cannot acquire the land for digging up a canal. Therefore, a Mandamus may be issued declaring that the property of an extent of Ac.8.2425 of Murari Village, Gandepalli Mandal, East Godavari District, as
Grama Kantham private land ignoring the ownership and that without following due procedure, the respondents cannot evict the petitioners.

In opposition to the writ petition, the Special Deputy Collector, PLIS Unit-2, Peddapuram, East Godavari District, filed a counter-affidavit stating that after issuance of G.O.Ms.No.136, dated 24-02-2004, by the Government for acquisition of land for excavation of canal under PLIS in various Mandals of East Godavari District, the Executive Engineer filed a requisition on
10-08-2004 for acquisition of Ac.132.59 cents of land for formation of main canal under PLIS, unit II, at Murari Village of Gandepalli Mandal. The land was surveyed and after scrutiny of the records, it was noticed that an extent of 8.2434 cents of Grama Kantham land, which was classified as Government Poramboke in 'A' Register, is also included in the requisition. The Government has proposed to initiate Land Acquisition proceedings for acquiring an extent of Ac.124.3466 cents of private land. Accordingly, the Mandal Revenue Officer, Gandepalli, was requested to initiate land transfer proposals as per Land Transfer Rules for the said Government Poramboke (Grama Kantham). At that stage, the present writ petition is filed.

It is further stated that the first petitioner purchased Ac.0.33 cents of land in Survey No.537 of Grama Kantham Government Poramboke of Murari Village on 25-10-2000 under a registered Sale Deed *vide* No.2421/2000. As per the said document, the land is vacant on the relevant date. The seller, K.Seethayamma, has clearly mentioned in the sale deed that as the land is
Grama Kantham and vacant land, no taxes were paid to the Revenue Department or

Gram Panchayat. As per the registered document bearing No.2422, dated 25-10-2000, Mr. K.Pallam Raju, son of Raju of Vosuri Nagar, H/o Vedureswaram of Ravulapalem Mandal, sold 0.30 cents of land in Survey No.537 to the
first petitioner. In both the cases, the vendors belong to Vedureswaram Village and that they are non-residents of Murari Village. They sold Grama Kantham Government Poramboke land as if it is their own land. The said vacant poramboke lands are purchased by the first petitioner and gifted a part of the land to his own daughter under a Registered Lease Agreement Deed *vide* No.1635/2004. The communal sites though existing in
Grama Kantham, they are not treated as properties of individuals. They are kept at the disposal of the local bodies viz., Gram Panchayat / Municipality / Municipal Corporation etc. The transaction under the registered sale deed does not fortify the right of the petitioners because the vendors have no right over the said property. As per G.O.Ms.Nos.1142 and 185, dated
18-06-1954 and 25-02-1969 respectively, the lands, where
pati matti available, are prohibited for assignment. The petitioners are trying to grab the Government Poramboke Grama Kantham land under the guise of Registered sale deeds executed by
non-locals, who have got no title over the land as it has got potential value by virtue of its location i.e., abutting to N.H.5. Under the circumstances, the Mandal Revenue Officer is required to hand over Grama Kantham Poramboke (Government) vacant lands duly following relevant Law/Rules/norms and also as per Land Encroachment Act. Since it is a Grama Kantham land, the same need not be acquired, but necessary procedure is to be followed under the provisions of the Land Encroachment Act for due eviction of unauthorized occupants. Accordingly, on
26-12-2005, the Mandal Revenue Officer has been addressed to initiate action to transfer Grama Kantham land, which is fallen in the alignment of PLIS Main Canal to the Irrigation Department. Out of a total extent of Ac.39.10 cents of Grama Kantham in Survey No.537, land to an extent of Ac.8.2434 cents has fallen in the alignment of PLIS, for which the Mandal Revenue Officer was requested. Out of Ac.8.2434 cents of land, an extent of Ac.0.37 cents is covered by 25 structures and remaining extent of Ac.7.8725 is vacant. None of the owners of the structures have produced any patta for the land under their enjoyment. Those are clear encroachments in the Government Poramboke Grama Kantham land, for which necessary procedure is to be followed for due eviction.

Learned counsel for the petitioners is unable to say as to the nature of right claimed by the petitioners whether it is a possessory right or a patta right inherited under the registered sale deeds. If that be the case, filing the writ petition to stall the proceedings for the entire 8 acres of land, where PLIS project is being implemented, is nothing but an abuse of process of law. Admittedly, the petitioners are claiming right under the sale deed to an extent of 33 cents of land. The record produced by the petitioners discloses that the Special Deputy Collector, PLIS unit-II, Peddapuram, published a notice calling upon the people to resubmit their claims along with necessary documents on or before 18-07-2005. If the petitioners have already submitted their documents claiming their right over the property, it is for the Special Deputy Collector to consider the same or to pay compensation to the petitioners for the lands or structures affected in the project. Unless the petitioners establish their right over the property, no mandamus can be issued in favour of the petitioners for the entire area, for which they had no right. In view of the same, the writ petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. However, it is open for the petitioners to approach the Special Deputy Collector with necessary documents to prove their title or right over the said property. On such filing, it is for the Special Deputy Collector to consider and pass appropriate orders. There shall be no order as to costs.

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(A.GOPAL REDDY, J)

17th APRIL, 2006.

Note: furnish c.c. in two days.

B/o

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